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**COPY MAILED**

**JAN 05 2006**

**OFFICE OF PETITIONS**

In re Application of :  
Wen-Hai Tsao :  
Application No. 10/740,480 :  
Filed: December 22, 2003 :  
For: CUTTING MECHANISM MINUTE : ON PETITION  
ADJUSTMENT DEVICE FOR A STONE :  
CUTTER :

This is a decision on the Petition to request for supplement of a Notice of Allowance and the Issue Fee transmittal, filed December 8, 2004. The petition is properly treated under 37 CFR § 1.181. The delay in treating this petition is regretted.

The Petition under 37 CFR 1.137(a) is hereby **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due, mailed September 8, 2004. The Notice set a non-extendable three (3) month period for reply. No response having been received, the application became abandoned on December 9, 2005. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

Applicant filed the instant petition wherein Applicant avers that he did not receive the Notice.

In response to Applicant's petition, the Office mailed a supplemental Notice of Allowability on October 18, 2005<sup>1</sup>.

Applicant filed a Communication to Issue Fee on November 14, 2005, and stated that the October 18, 2005 Notice of Allowance was received; however, no Issue Fee Transmittal Form was attached, "which causes applicant unable to pay the Issue Fee due." Applicant requested an Issue Fee Transmittal "so as to enable the applicant to timely pay the Issue Fee due for the above identified application."

Applicant is advised that an allegation that an Office action was not received may form the basis for revival of an application based upon unavoidable abandonment. If the allegation is adequately supported, the petition may be granted and a new Office action mailed. The showing required to establish non-receipt of an Office communication must include:

1. A statement from the Applicant stating that the Office communication was not received by the Applicant and attesting to the fact that a search of the file jacket and docket records indicate that the Office communication was not received.
2. A copy of the file jacket or docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in Applicant's statement.

Accordingly, Applicant's assertion, that the Notice was not received, is insufficient to justify granting of the petition. Applicant must also provide a copy of the file jacket and/or docket record (or file jacket) where the non-received Notice would have been entered had it been received and docketed.

Accordingly, the petition is dismissed.

Applicant should file a Request for Reconsideration of Petition and include the necessary statements and copies of documents.

Further correspondence with respect to this matter should be addressed as follows:

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<sup>1</sup>Office records do not indicate that a Supplemental Notice of Allowance was mailed.

By mail: Commissioner for Patents  
PO Box 1450  
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By FAX: (571) 273-8300  
Attn: Office of Petitions

By hand: Customer Service Window  
Randolph Building  
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Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

  
Derek L. Woods

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for Patent Examination Policy